

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

RODERICK DENNIS HAYES,

Defendant-Appellant.

UNPUBLISHED

February 22, 2011

No. 295143

Wayne Circuit Court

LC No. 09-007139-FH

Before: SAAD, P.J., and K. F. KELLY and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of breaking and entering with intent to commit larceny, MCL 750.110, larceny, MCL 750.360, and two counts of assaulting, battering, wounding, resisting, obstructing, opposing, or endangering a police officer, MCL 750.81d(1). Because the trial court did not abuse its discretion in admitting evidence or in denying defendant's motion for mistrial, we affirm.

On March 2, 2009, someone broke into a dollar store in Lincoln Park before it opened that morning. An eye witness called 911 stating that he saw someone leaving the store through a window and carrying a bag. Police arrived within a minute and saw defendant in the area wearing a hoodie, coat, and hat that matched the description provided by the witness. The store owner provided police with surveillance video footage of the incident. Defendant's clothing that day also matched the clothing of the person seen on the video taking change from the cash register and stealing cigarettes.

When the police arrived at the scene and saw defendant, he was running away from their marked car despite being ordered to stop. Defendant continued to run until officers were able to place him under arrest in the backyard of a nearby vacant house. It took three or four officers to get the defendant handcuffed and to the patrol car. Defendant resisted the officers by going limp so he had to be carried and then stiffening when the officers tried to place him in the car. Defendant also kicked and spit at the officers. Two officers testified that when defendant was spitting at them, he also screamed that he had HIV. At trial, defense counsel objected to allowing such testimony.

Defense counsel also objected to a comment by the prosecutor in response to defendant making a statement in the courtroom while the prosecutor was questioning a police officer witness. After defendant's statement, the prosecutor requested that the trial court instruct

defendant to remain silent unless he was going to take the stand. Defense counsel objected and made a motion for a mistrial, which the trial court denied.

On appeal, defendant once again raises the issues concerning admission of evidence that defendant stated he had HIV and concerning the prosecutor's request that defendant remain silent unless he was going to testify. At the outset, we point out that defendant has cited little to no legal authority to support his claims that the trial court abused its discretion concerning either the admission of evidence or denial of the mistrial.

An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment [of an issue] with little or no citation of supporting authority. The failure to cite any supporting legal authority constitutes abandonment of this issue. [*People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001). (internal citations omitted).]

Even if defendant had not abandoned these issues, there is still no basis for finding an abuse of discretion on either issue.

Admission of Evidence

We review a trial court's evidentiary rulings for an abuse of discretion. *Watson*, 245 Mich App at 575. An abuse of discretion occurs when the trial court chooses an outcome falling outside the principled range of outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003); *People v Carnicom*, 272 Mich App 614, 616-617; 727 NW2d 399 (2006).

Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. *People v Mills*, 450 Mich 61, 74; 537 NW2d 909 (1995). To some extent all evidence is prejudicial, but evidence is only excluded when the probative value is substantially outweighed by the danger of unfair prejudice. *Id.* at 74-75. Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury. *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998).

In the present case, the police testimony regarding defendant screaming that he had HIV was relevant because it, together with the evidence that defendant spit at the officers, indicated that defendant was opposing and endangering the officers while they were performing their official duties. That opposition and endangerment was relevant to the two counts of assaulting, battering, wounding, resisting, obstructing, opposing, or endangering a police officer, MCL 750.81d(1).

Further, additional testimony by one officer that none of the police officers were later tested for HIV after a test was done on defendant suggested that defendant's HIV assertion was in furtherance of his resisting rather than the truth of such condition. With that follow-up questioning, it was unlikely that the jury would give undue, prejudicial weight to the testimony about defendant's statement concerning HIV. Therefore, the trial court's decision to allow the testimony into evidence was not outside the principled range of outcomes.

Motion for Mistrial

We review a trial court's denial of a motion for a mistrial for an abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001).

The United States Constitution guarantees that a person in a criminal case shall not be compelled to be a witness against himself. *People v Shafier*, 483 Mich 205, 212; 768 NW2d 305 (2009). That silence may not be used as evidence against that person. *Id.* While any reference to a defendant's post-arrest, post-*Miranda*¹ silence is generally prohibited; there are some circumstances where a single reference to a defendant's silence may not amount to a constitutional violation "if the reference is so minimal that silence was not submitted to the jury as evidence from which it was allowed to draw any permissible inference. . . ." *Id.* at 214-215 (internal quotations and citations omitted).

Here, defendant objected to the prosecutor's request, following a courtroom outburst by defendant, that the trial court instruct defendant to remain silent unless he was going to testify. The trial court instructed the jury to disregard the prosecutor's comment, but denied defendant's motion for a mistrial because of that comment. When looking at the totality of the circumstances, considering defendant's courtroom conduct, the prosecutor's statement requesting input from the trial court to defendant, and the trial court's instruction to the jury to disregard the prosecutor's comment, a reasonable person could find justification for the trial court's ruling to deny a mistrial. The trial court did not abuse its discretion when it denied a mistrial based on the prosecutor's request for defendant to remain silent during courtroom proceedings unless he was going to testify.

Affirmed.

/s/ Henry William Saad

/s/ Kirsten Frank Kelly

/s/ Pat M. Donofrio

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).